

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 * * * * *

4 RALPH AND CHRIS LEWIS,

)

5 Appellants,

)

) OSPI 199-91

6 vs.

)

) DECISION

7 COLUMBUS SCHOOL DISTRICT NO. 6,

)

)

8 Respondents.

)

)

9 * * * * *

10 STATEMENT OF THE CASE

11 This is an appeal by Ralph and Chris Lewis (Lewis) of the
12 October 9, 1991 decision of the Stillwater County Transportation
13 Committee dismissing an appeal of a decision of Columbus School
14 District No. 6 for lack of jurisdiction.

15 On June 5, 1991, Lewis appeared before the Stillwater County
16 Transportation Committee and requested a "finding of facts
17 meeting." Lewis was informed that the school board would have to
18 act on the request before the committee could hear an appeal.

19 On June 10, 1991, at a regular meeting of the board of
20 trustees of School District No. 6, Lewis appeared and requested
21 the extension of a bus route. The matter was referred to the
22 board's transportation committee for recommendation. On June 24,
23 1991, after hearing the recommendation of the transportation
24 committee, the trustees voted unanimously to deny the request.
25 At the direction of the board, Superintendent Moulds mailed
notification to Lewis that the board "turned down (your) request

1 to extend the Countryman Creek route." in a letter dated June 27,
2 1991. An undated letter from Lewis appealing the decision was
3 marked received by the County Superintendent on August 14, 1991.

4 The county transportation committee considered the appeal
5 and determined under Rule 10.6.104, ARM, that they were without
6 jurisdiction on the matter because of Lewis' failure to file a
7 timely appeal. That decision was appealed to this Superintendent
8 on November 5, 1991. This Superintendent has jurisdiction to
9 hear such appeals pursuant to Section 20-10-132, MCA, and Rule
10 10.6.121, ARM.

11 DISCUSSION

12 County transportation committees are mandated by statute to
13 hear appeals from decisions of trustees as to transportation
14 matters. § 20-10-132, MCA. Cases brought before the county
15 transportation committee are governed by the Administrative Rules
16 of Montana, Sections 10.6.101, et seq. These rules provide that
17 an appeal is commenced by filing a notice of appeal within thirty
18 (30) days after the final decision of the board of trustees.

19 Lewis' contend that they in some way relied on members of
20 the county transportation committee that the appeal was "tabled."
21 The minutes of the committee meeting contain no motion to table
22 the appeal. In fact, the minutes contain no motion on Lewis'
23 request. Lewis was present at the meeting and the minutes
24 reflect the need for a decision of the school board. Without a
25 final decision of the board of trustees, the matter was not ripe
for any action by the committee.

1 All business and decisions of trustees are required to be
2 transacted at a regular meeting or a properly called special
3 meeting. These meetings are open to the public and minutes of
4 all votes and business transacted are required. § 20-3-322, MCA.
5 The meeting of June 24 was a properly called special meeting at
6 which the trustees made their unanimous vote on a final decision
7 on Lewis' request. The appeal time runs from that date.
8 Although the trustees directed that written notice of their
9 decision be given to Lewis, neither Montana statute nor the
10 administrative rules require notification.

11 Lewis' contend that the appeal was delivered to the County
12 Superintendent on August 6 or 7, rather than August 14, the date
13 of receipt noted on the appeal. They further contend that their
14 inability to reach the county superintendent caused them to miss
15 the filing date. The burden of vigilance is on the Lewis' to
16 insure timely filing. Schaffer et al. vs. Champion Home Builders
17 Co., 44 St. Rptr. 2196 (Mont. 1987). In whatever manner the
18 days are counted -- from June 24 to August 14 or from June 30 to
19 August 6 or from July 1 to August 6 -- the time provided for
20 appeal had passed.

21 The rules governing the administrative procedure for school
22 controversy cases are rules adopted pursuant to the Montana
23 Administrative Procedures Act. Timely notice is mandatory and
24 jurisdiction is not conferred on the committee without a timely
25 filing. The responsibility of compliance rests with the party


1 wishing to appeal. Ladene Mangold vs. Trustees, Choteau County
2 Elementary School District No. 11, 8 Ed Law 36 (OSPI 1989).

3 This is not the first time the Lewis' have made the request
4 for an extension of the bus route. Fortunately, they are not
5 prohibited from doing so again and should clearly know the
6 procedure and time constraints involved.

7 **DECISION**

8 The decision of the Stillwater County Transportation
9 Committee is affirmed.

10 DATED this 24 day of April, 1992.

11
12 
13 NANCY KEENAN
14

15 **CERTIFICATE OF SERVICE**

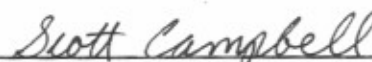
16 THIS IS TO CERTIFY that on this 5th day of ^{May}~~April~~, 1992, a
17 true and exact copy of the foregoing Decision was mailed, postage
18 prepaid, to the following:

19 Jeffrey A. Hunnes
20 WRIGHT, TOLLIVER AND GUTHALS
21 P.O. Box 1977
22 Billings, Montana 59103

Teresa R. Miller, Director
Transportation Committee
Stillwater County, Box 1098
Columbus, Montana 59019

23 Douglas D. Howard
24 HEARD & HOWARD
25 219 N. Fourth St.
Columbus, Montana 59019-0926

Blair Jones
Stillwater County Attorney
38 North Fourth
Columbus, Montana 59019

26 
27 Scott Campbell
28 Paralegal Assistant
29 Office of Public Instruction